IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11191 & 10890 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER (S. T.) - Petitioner(s)

Versus

LALJI POPATBHAI VAGADIA - Respondent(s)

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Appearance :

MS MONALI H BHATT for Petitioner(s) : 1,
MR IS SUPEHIA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 20/02/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.Dipen Desai, in Special Civil Application No.10890 of 2002 and learned Advocate, Ms.Monali H. Bhatt, appearing on behalf of Corporation in Special Civil Application

No.11191 of 2002, and learned Advocate, Mr.Supheia, for the respondent workman.

2. In Special Civil Application No.10890 of 2002, the Corporation has challenged the order passed by Conciliation Officer dated 30th October,2001, wherein, the Approval Application filed by petitioner – Corporation under Section 33(2)(b) of I.D.Act,1947 has been rejected. This Court has issued rule and ad-interim relief in terms of Para.6(B) granted on 25th October,2002. Subsequently, the respondent – workman has retired from service on 29th February,2004. The respondent workman was dismissed from service on 19th May,2000. The petitioner Corporation has paid amount of P.F. of Rs.2,61,224. These facts are placed on record by letter dated 16th August,2004 written by the Divisional Controller, S.T.Junagadh to the Legal Advisor of the Corporation. In respect to claim of gratuity amount which was not sanctioned, but averments in the letter that as and when it will be sanctioned, same will be paid to the workman. In Civil Application No.5028 of 2004 in Special Civil Application No.11191 of 2002, learned Advocate,

Mr.M.D.Pandya, appearing on behalf of petitioner – Corporation stated that amount, which is admittedly payable to the workman, is already paid to the applicant – workman on 24th September,2004. On that basis, Civil Application was disposed of. In Civil Application No.8934 of 2002 in Special Civil Application No.11191 of 2002, this Court has passed an order on 24th September,2002 directing the Corporation to pay last drawn wages to the workman on or before 21st January,2003 and from 1st January,2003, same shall be paid on or before 10th of succeeding calendar month. Accordingly, Civil Application was also disposed of.

3. In Special Civil Application No.11191 of 2002, petitioner – Corporation has challenged the award passed by Labour Court, Junagadh in Reference No.132 of 2000 dated 15th April,2002, wherein, Labour Court has set aside dismissal order, granted reinstatement with continuity of service and imposed the punishment of stoppage of three increments with cumulative effect.

4. Learned Advocate, Ms.Monali H. Bhatt, submitted that two allegations were made against the workman; one that he had recovered the amount of fare from one passenger and not issued tickets to the passenger at the time when checking was made by Checking Staff and second allegation is that he misbehaved with the Checking Staff and not co-operated with the checking proceedings and also not allowed the Checking Staff to complete the proceedings against the workman. She relied upon operative portion of Page-26 and, then Page-21 of the award has been read before this Court. Her submission was that Labour Court has come to conclusion that allegation of misbehavior with the Checking Staff was found to be proved by the Labour Court, but allegation of misappropriation was not found to be proved. She submitted that there is no need to examine passenger according to the Apex Court's decision in case of State of Hariyana Vs. Ratan Singh reported in AIR 1977 SC 1512. She also submitted that respondent workman was a habitual defaulter and in past, on four occasions, he was dismissed from service and in all, 21 defaults have been committed by him, which is produced on record by

the Corporation before the Labour Court as well as before this Court. She submitted that opportunity to improve the conduct of workman was given by Corporation, but his conduct was not improved and therefore, ultimately, Corporation has no option but to dismiss him from service. She also submitted that driver's statement and controller's statement were obtained by Checking Staff which is sufficient evidence to prove the misconduct against the workman. She also submitted that Labour Court has exercised power under Section 11A is a clear error in such cases and, therefore, award passed by Labour Court is required to be set aside. Except that, no other submission is made by learned Advocate, Ms.Monali Bhatt and no other decision has been relied by her in support of her submission.

5. Learned Advocate, Mr.Supheia, appearing for the respondent workman submitted that respondent workman has already retired from service on 29th February,2004. He also made statement before this Court that from date of award, for subsequent period as per order passed by this Court, 17B wages was paid

to the workman. Mr.Supheia also submitted that if the Court feels that some more punishment is required in light of misconduct found to be proved by the Labour Court, then, Court may impose adequate punishment to the workmen concerned. Mr.Supheia also submitted that Labour Court has power under Section 11A of the I.D.Act,1947 to exercise in case where the Labour Court satisfies that order of punishment is not justified, the Labour Court can interfere with the punishment and also differ with the finding given by Inquiry Officer. Therefore, according to him, out of two charges, if one charge is not proved, which may be a serious one, then, in case of negligence, the punishment of dismissal is apparently unjustified and disproportionate. Therefore, interference by Labour Court while exercising power under Section 11A of the I.D.Act is reasonable and no error has been committed by Labour Court while exercising such power. Therefore, according to him, once the workman is already retired from service, then, there is no question of repeating any misconduct in future and there is no scope of habitual default to be made by the workman. Therefore, his submission is that in

light of subsequent development, Court may pass appropriate order imposing some more punishment to the workman. Except that, Mr.Supheia has not made any other submission or not relied upon any decision in support of his submission.

6. I have considered the submissions made by both the learned Advocates and have perused the award passed by Labour Court. The allegations made against the workman that on 21st October,1997 when respondent was on route from Porbandar to Junagadh, one passenger was found without ticket. The allegation was made that workman has recovered the fare of Rs.13/- and not issued the tickets. At the time of checking, conduct of the workman was not found to be proper and ultimately, he was dismissed from service on the basis of these two allegations which was found to be proved in inquiry. The Labour Court has re-appreciated the oral as well as documentary evidence led in departmental inquiry and come to the conclusion that statement of passenger obtained by Checking Staff bear thump impression of the passenger, which was not identified by any of the

witnesses before the departmental inquiry. Therefore, he having doubt about statement of passenger in absence of examining in departmental inquiry, Labour Court has considered that in reply of the charge sheet, workman has demanded and made request to Inquiry Officer that opportunity may be given to cross examine the passenger. Even though, no opportunity was given to the workman and considering the fact that merely thumb impression which was not identified in departmental inquiry, Labour Court has come to conclusion that charge of misappropriation is not found to be proved, but charge of misconduct relating to non co-operation with checking staff is found to be proved which considered to be a negligence on the part of workman. Labour Court has also considered the default card as well as four time dismissal of the workman. However, the Labour Court has examined the matter on the basis of re-appreciation of evidence that looking to the allegations and record of inquiry, charge of negligence relating to non-cooperation with checking staff is found to be proved, but charge of misappropriation is not proved. Therefore, the Labour

Court is satisfied that looking to this charge of non-cooperation with checking staff not being such a serious one, which require extreme punishment of dismissal and, therefore, Labour Court has satisfied that punishment of dismissal, looking to the charge which is found to be proved before the Labour Court, is unjustified. Therefore, Labour Court has exercised power under Section 11A of the I.D.Act,1947. The Labour Court, therefore, granted reinstatement with continuity of service without back wages of interim period from 19th May,2000 to 15th April,2002 and imposed punishment of stoppage of three increments with cumulative effect.

7. I have considered the submissions made by learned Advocates appearing for the parties and have also perused the award and considering the finding given by the Labour Court and in light of the fact that workman has already retired from service on 29th February,2004, according to my opinion, the finding given by the Labour Court while re-appreciating the evidence under Section 11A of the I.D.Act,1947, it cannot consider faulty and there is no infirmity in

the award passed by Labour Court. The Labour Court has power under Section 11A of the I.D.Act to come to different conclusion from the conclusion of the Management. The view taken by Apex Court in case of The Workmen of M/s.Firestone Tyre & Rubber Co. of India P. Ltd. Vs. The Management and Others reported in AIR 1973 SC 1227 in Para 36 and 37 is quoted as under :

> "36. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11A, abut the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

"37. We are no inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a

> power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognized in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are not put on a par by Section 11A."

8. In light of above observations made by Apex Court, Labour Court can differ the conclusion from the Management while exercising power under Section 11A of the I.D.Act. Accordingly, the Labour Court has rightly made observations and come to the conclusion after considering the facts which were on record. According to my opinion, now not to disturb the award as no much adverse consequences to the Corporation, because the workman has already retired from service. However, considering the 20 defaults in past and four time dismissal of the respondent – workman, according to my opinion, if punishment of three increments with cumulative effect may be increased to six increments with cumulative effect will meet the ends of justice between the parties. Therefore, according to my opinion, Labour Court has not committed any error while granting the

reinstatement with continuity of service and there is no error apparently on the face of record committed by the Labour Court and, therefore, the submissions made by learned Advocate, Ms.Monali Bhatt, is not accepted and same is rejected. However, submission of learned Advocate, Mr.Supheia, has been considered while increasing the punishment from three increments to six increments with cumulative effect.

9. In the affidavit-in-reply filed by one Mr.Vijay Hazare, Legal Advisor of the Corporation in Civil Application No.5028 of 2004, it is clearly averred that cheque of Rs.2,60,177/- of State Bank of Saurashtra issued in favour of respondent workman for the dues of P.F.Amount.

10. In view of the above, Special Civil Application No.11191 of 2002 is partly allowed. Rule is made absolute to that extent. Petitioner - Corporation is directed to make the payment of retirement dues whichever available to the respondent workman in view of the order passed by this Court within a period of three months from the date of receipt of writ of this

order.

11. In light of the above order, Special Civil Application No.10890 of 2002, wherein, Corporation has challenged the order of rejection of approval application, which, according to my opinion, has become infructuous and, therefore, same has not been examined by this Court. Accordingly, Special Civil Application No.10890 of 2002 is disposed of as having become infructuous. Rule discharged with no order as to costs. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

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